

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 30, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JORDAN J.,

Plaintiff,

v.

MARTIN O'MALLEY,
COMMISSIONER OF SOCIAL
SECURITY,¹

Defendant.

NO: 4:23-CV-005027-LRS

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' briefs. ECF Nos. 10, 14. This matter was submitted for consideration without oral argument. Plaintiff is represented by

¹ Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Rules of Civil Procedure, Martin O'Malley is substituted for Kilolo Kijakazi as the Defendant in this suit.

1 attorney Chad Hatfield. Defendant is represented by Special Assistant United States
2 Attorney Jacob Phillips. The Court, having reviewed the administrative record and
3 the parties' briefing, is fully informed. For the reasons discussed below, Plaintiff's
4 Brief,² ECF No. 10, is denied and Defendant's Brief, ECF No. 14, is granted.

5 JURISDICTION

6 An application for supplemental security income (SSI) was filed on behalf of
7 Jordan J.,³ an individual under the age of 18, on March 26, 2018, and alleged an
8 onset date of April 3, 2004. Tr. 134-39. Benefits were denied initially, Tr. 82-85,
9 and upon reconsideration, Tr. 89-92. On May 6, 2020, Plaintiff's mother appeared
10 at a hearing before an administrative law judge (ALJ). Tr. 30-52. On June 1, 2020,
11 the ALJ issued an unfavorable decision, Tr. 10-25, and the Appeals Council denied
12 review. Tr. 1-6. Plaintiff filed a complaint in the United States District Court for
13 the Eastern District of Washington, Tr. 755-57, and on March 21, 2022, pursuant to
14 the stipulation of the parties, the United States Magistrate Judge James Goeke

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16 ² Plaintiff's brief is labeled as a Motion for Summary Judgment. ECF No. 10. The
17 supplemental rules for Social Security actions under 42 U.S.C. § 405(g) went into
18 effect on December 1, 2022; Rule 5 and Rule 6 state the actions are presented as
19 briefs rather than motions. Fed. R. Civ. P. Supp. Soc. Sec. R. 5, 6.

20 ³ The court identifies a plaintiff in a social security case only by the first name and
21 last initial in order to protect privacy. *See* LCivR 5.2(c).

1 reversed the ALJ's decision and remanded the matter to the Commissioner for
2 further administrative proceedings. Tr. 760-65. On December 1, 2022, Plaintiff
3 appeared at a second hearing, Tr. 720-32, and on December 22, 2022, the ALJ
4 issued another unfavorable decision. Tr. 689-719. The matter is now before this
5 Court pursuant to 42 U.S.C. § 1383(c)(3).

6 **BACKGROUND**

7 The facts of the case are set forth in the administrative hearing and transcripts,
8 the ALJ's decision, and the briefs of Plaintiff and the Commissioner, and are
9 therefore only summarized here.

10 Plaintiff was 16 years old at the time of the first hearing. Tr. 47. Plaintiff's
11 mother testified at the first hearing that Plaintiff had not been doing well in school
12 for the previous few years. Tr. 35. He missed two to four days of school per week
13 due to depression. Tr. 35-36. He was not motivated and did not feel like getting out
14 of bed. Tr. 36. According to Plaintiff's mother, he did not care when she restricted
15 him or took away privileges in an attempt to motivate him. Tr. 36-37. He spent
16 more than fifty percent of the time in his room. Tr. 37. When he was depressed, he
17 would lie in bed or on the couch, have headaches, keep to himself, and would not
18 play video games or watch television. Tr. 38. He needed constant reminders and
19 supervision to complete tasks. Tr. 41. Plaintiff's mother has called crisis response a
20 few times because Plaintiff was cutting himself or feeling suicidal. Tr. 38. He had
21

1 urine tests which were positive for marijuana. Tr. 39-40. Sometimes he would miss
2 school due to headaches. Tr. 45. Eventually Plaintiff was homeschooled. Tr. 45.

3 At the second hearing, Plaintiff acknowledged his mental health functioning
4 had improved and requested a closed period ending on August 3, 2021, before
5 Plaintiff turned age 18. Tr. 724-25. Plaintiff testified that he used marijuana on the
6 weekends for about two months in 2020 but has since stopped. Tr. 726. His
7 depression was so bad that sometimes he could not do his homeschool work. Tr.
8 727. He denied thoughts of self-harm. Tr. 727. His attitude improved when he
9 started Wellbutrin and he connected with a new counselor. Tr. 728. His bad days
10 decreased to about once a month, but he was able to keep up with his classes. Tr.
11 729. He graduated from high school and at the time of the hearing, he was working
12 13-20 hours per week at Dollar Tree. Tr. 730.

13 STANDARD OF REVIEW

14 A district court's review of a final decision of the Commissioner of Social
15 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
16 limited; the Commissioner's decision will be disturbed "only if it is not supported by
17 substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158
18 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable
19 mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and
20 citation omitted). Stated differently, substantial evidence equates to "more than a
21 mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted).

1 In determining whether the standard has been satisfied, a reviewing court must
2 consider the entire record as a whole rather than searching for supporting evidence in
3 isolation. *Id.*

4 In reviewing a denial of benefits, a district court may not substitute its
5 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156
6 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
7 rational interpretation, [the court] must uphold the ALJ’s findings if they are
8 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
9 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an ALJ’s
10 decision on account of an error that is harmless.” *Id.* An error is harmless “where it
11 is inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at 1115
12 (quotation and citation omitted). The party appealing the ALJ’s decision generally
13 bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S.
14 396, 409-10 (2009).

15 **THREE-STEP PROCESS FOR EVALUATING CHILD DISABILITY**

16 To qualify for Title XVI supplemental security income benefits, a child under
17 the age of eighteen must have “a medically determinable physical or mental
18 impairment, which results in marked and severe functional limitations, and which
19 can be expected to result in death or which has lasted or can be expected to last for a
20 continuous period of not less than 12 months.” 42 U.S.C. § 1382c(a)(3)(C)(i). The
21

1 regulations provide a three-step process to determine whether a claimant satisfies the
2 above criteria. 20 C.F.R. § 416.924(a).

3 First, the ALJ must determine whether the child is engaged in substantial
4 gainful activity. 20 C.F.R. § 416.924(b). Second, the ALJ considers whether the
5 child has a “medically determinable impairment that is severe,” which is defined as
6 an impairment that causes “more than minimal functional limitations.” 20 C.F.R. §
7 416.924(c). Finally, if the ALJ finds a severe impairment, she must then consider
8 whether the impairment “meets or medically equals” or if it “functionally equals” a
9 disability listed in the Listing of Impairments. 20 C.F.R. § 416.924(d).

10 If the ALJ finds that the child’s impairment or combination of impairments
11 does not meet or medically equal a listing, the functional equivalence assessment
12 requires evaluation of the child’s functioning in six “domains.” These six domains,
13 which are designed “to capture all of what a child can or cannot do,” include:

- 14 (1) Acquiring and using information;
- 15 (2) Attending and completing tasks;
- 16 (3) Interacting and relating with others;
- 17 (4) Moving about and manipulating objects;
- 18 (5) Caring for self; and
- 19 (6) Health and physical well-being.

20 20 C.F.R. § 416.926a(b)(1). An impairment will be deemed to functionally equal a
21 listed impairment if the child’s condition results in a “marked” limitations in two
domains, or an “extreme” limitation in one domain. 20 C.F.R. § 416.926a(a).

An impairment is a “marked limitation” if it “interferes seriously with [a
person’s] ability to independently initiate, sustain, or complete activities.” 20 C.F.R.

1 § 416.926a(e)(2)(i). An “extreme limitation” is defined as a limitation that
2 “interferes very seriously with [a person’s] ability to independently initiate, sustain,
3 or complete activities.” 20 C.F.R. § 416.926a(e)(3)(i).

4 **ALJ’S FINDINGS**

5 At step one of the sequential evaluation process, the ALJ found Plaintiff had
6 not engaged in substantial gainful activity since March 26, 2018, the application
7 date. Tr. 697. At step two, the ALJ found that from the application date through
8 April 2, 2022, Plaintiff had the following severe impairments: depression, anxiety
9 disorder, and attention deficit hyperactivity disorder. Tr. 697. At step three, the
10 ALJ found that prior to attaining age 18, Plaintiff did not have an impairment or
11 combination of impairments that met or medically equaled one of the listed
12 impairments in 20 C.F.R. Part 404, Subpt. P, App’x 1. Tr. 698-99. The ALJ then
13 determined that prior to attaining age 18, Plaintiff did not have an impairment or
14 combination of impairments that functionally equaled the severity of the listings. Tr.
15 700. As a result, the ALJ concluded that Plaintiff was not disabled prior to attaining
16 age 18. Tr. 709.

17 The ALJ also found that since attaining age 18, Plaintiff does not have a
18 severe impairment or combination of impairments. Tr. 709. As a result, the ALJ
19 concluded that Plaintiff has not been disabled, as defined in the Social Security Act,
20 since March 26, 2018, the date the application was filed. Tr. 712.

21 **ISSUES**

1 Plaintiff seeks judicial review of the Commissioner's final decision denying
2 supplemental security income under Title XVI of the Social Security Act. ECF No.
3 10. Plaintiff raises the following issues for review:

- 4 1. Whether the ALJ properly considered the medical opinion evidence;
- 5 2. Whether the ALJ properly determined Plaintiff's impairments did not
6 meet or medically equal a Listing;
- 7 3. Whether the ALJ properly determined Plaintiff's impairments did not
8 functionally equal a listing;
- 9 4. Whether the ALJ properly considered the symptom testimony; and
- 10 5. Whether the ALJ properly considered the lay witness statements.

11 ECF No. 10 at 2.

12 DISCUSSION

13 A. Medical Opinion – Angela Hamel, ARNP

14 Plaintiff contends the ALJ failed to properly consider the opinion of Angela
15 Hamel, ARNP. ECF No. 10 at 8-11. In March 2020, Ms. Hamel completed a
16 medical report form and opined that Plaintiff had marked limitations in the domains
17 of acquiring and using information, attending and completing tasks, interacting and
18 relating with others, caring for yourself, and health and physical well-being. Tr.
19 663-65.

20 For claims filed on or after March 27, 2017, the regulations provide that the
21 ALJ will not “give any specific evidentiary weight...to any medical

1 opinion(s)..." *Revisions to Rules Regarding the Evaluation of Medical Evidence*,
2 2017 WL 168819, 82 Fed. Reg. 5867-88 (Jan. 18, 2017); 20 C.F.R. §
3 416.920c. Instead, an ALJ must consider and evaluate the persuasiveness of all
4 medical opinions or prior administrative medical findings from medical sources. 20
5 C.F.R. § 416.920c(a) and (b). Supportability and consistency are the most important
6 factors in evaluating the persuasiveness of medical opinions and prior administrative
7 findings, and therefore the ALJ is required to explain how both factors were
8 considered. 20 C.F.R. § 416.920c(b)(2). The ALJ may, but is not required, to
9 explain how other factors were considered. 20 C.F.R. § 416.920c(b)(2); *see* 20
10 C.F.R. § 416.920c(c)(1)-(5).

11 First, as to supportability, the ALJ found Ms. Hamel's opinion is not
12 supported by her exam findings. Tr. 707. The more relevant the objective medical
13 evidence and supporting explanations are supporting a medical opinion, the more
14 persuasive the medical opinion will be. 20 C.F.R. § 416.920c(c)(1)-(2). The ALJ
15 observed that Ms. Hamel's mental status exams revealed mostly normal findings.
16 Tr. 707. For example, in August 2020 and January 2021, the ALJ noted Plaintiff's
17 mental status exam was essentially normal. Tr. 707, 1087, 1244. Plaintiff cites
18 findings from other appointments and asserts they show Ms. Hamel's opinion is
19 "fully supported." ECF No. 10 at 10. However, the records cited by Plaintiff do not
20 undermine the ALJ's conclusion. ECF No. 10 at 10 (citing Tr. 621, 627, 650, 1094,
21 1082, 1086). For example, Plaintiff cites Ms. Hamel's October 2020 record

1 indicating Plaintiff's appearance was "disheveled" and he had poor eye contact, but
2 Plaintiff reported he was doing better, was not anxious or depressed, and there were
3 no concerns. Tr. 1082. Other records cited by Plaintiff are from other providers and
4 do not speak to the ALJ's determination that Ms. Hamel's opinion is not supported
5 by her own findings. ECF No. 10 at 9-10 (citing Tr. 408-09, 417-22). The ALJ's
6 finding is supported by substantial evidence.

7 Second, as to consistency, the ALJ found Ms. Hamel's opinion is inconsistent
8 with other evidence in the record. Tr. 707. The more consistent a medical opinion
9 is with other evidence from other medical and nonmedical sources in the record, the
10 more persuasive the opinion will be. 20 C.F.R. § 416.920c(c)(1)-(2). The ALJ
11 observed that Ms. Hamel's opinion is inconsistent with teacher questionnaires that
12 indicate Plaintiff had no limitation in acquiring and using information. Tr. 707
13 (citing Tr. 151, 199). Additionally, the ALJ found Ms. Hamel's opinion is
14 inconsistent with Plaintiff's hearing testimony that he graduated from high school,
15 obtained a job at Dollar Tree, and never experienced difficulty taking care of his
16 personal hygiene. Tr. 707, 727, 730. Plaintiff argues the ALJ "mischaracterized"
17 the teacher questionnaires, ECF No. 10 at 9, but as discussed *infra*, the ALJ's
18 interpretation is reasonable and based on the record. Substantial evidence supports
19 the ALJ's finding regarding consistency. There is no error.

20 **B. Meets or Medically Equals Listing**
21

1 Plaintiff contends the ALJ failed to properly evaluate the Listings and find
2 him disabled for meeting or medically equaling Listing 112.04, 112.06, and 112.11.
3 ECF No. 10 at 11-13. As indicated *supra*, for children, the listings describe
4 “impairments that cause marked and severe functional limitations.” 20 C.F.R. §
5 416.925. In evaluating a disability claim for a minor, the ALJ must determine
6 whether a claimant has an impairment or combination of impairments that meets,
7 medically equals, or functionally equals an impairment in the listings. *See* 20 C.F.R.
8 § 416.924(a). If an impairment or combination of impairments meets the duration
9 requirement and meets, medically equals, or functionally equals a listing, the
10 claimant is presumed to be disabled. 20 C.F.R. § 416.924(d). If an impairment does
11 not meet the duration requirement, or does not meet, medically equal, or functionally
12 equals the listings, the claimant is not disabled. 20 C.F.R. § 416.924(d).

13 Listing 112.04 for minors with depressive, bipolar, and related disorders and
14 Listing 112.06 for minors with anxiety and obsessive-compulsive disorders each
15 have three paragraphs designated A, B, and C. To meet either listing, a mental
16 disorder must satisfy the requirements of both A and B, or both A and C. 20 C.F.R.
17 Pt. 404, Subpt. P, App. 1, § 112.00A2. Listing 112.11 has two paragraphs, A and B,
18 and to meet the listing, a mental disorder must satisfy the requirements of both A
19 and B. The ALJ found that Plaintiff’s depression, anxiety, and ADHD did not meet
20 the requirements of the respective Listings. Tr. 698; *see* 20 C.F.R. Pt. 404, Subpt. P,
21 App. 1, §§ 112.04, 112.06, 112.11.

1 Plaintiff contends the ALJ erred in evaluating the Listings. A plaintiff is
2 required to demonstrate that he medically equaled each of the individual criteria
3 under a listing in order to demonstrate error. *Kennedy v. Colvin*, 738 F.3d 1172,
4 1178 (9th Cir. 2013). An ALJ does not have an obligation to discuss medical
5 equivalency sua sponte and does not err in failing to do so when the issue is not
6 raised. *See Ford v. Saul*, 950 F.3d 1141, 1157 (9th Cir. 2020) (citing *Burch v.*
7 *Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005)). Here, Plaintiff has not attempted to
8 show that he met or equaled any of the relevant Listings by showing he met the
9 criteria of the Listing 112.04, 112.06, or 112.11, nor has he set forth any theory of
10 equivalence.

11 Instead, Plaintiff generally argues four points: (1) the ALJ did not explain
12 the mild limitation in understanding, remembering, and applying information; (2)
13 the ALJ did not address certain evidence; (3) the ALJ did not discuss the C criteria;
14 and (4) the ALJ should have called a medical expert. ECF No. 10 at 12.

15 First, contrary to Plaintiff's argument, the ALJ did explain the mild limitation
16 assessed in the functional area of understanding, remembering, and applying
17 information. Tr. 699. The "B" criteria for Listings 112.04, 112.06, and 112.11 lists
18 four areas of mental functioning:

- 19 (1) Understand, remember, or apply information;
20 (2) Interact with others;
21 (3) Concentrate, persist, or maintain pace;
(4) Adapt or manage oneself.

1 The B criteria is met with an extreme limitation in one area, or a marked limitation in
2 two areas of mental functioning. The functional area of understanding, remembering,
3 and applying information:

4 refers to the abilities to learn, recall, and use information to perform
5 age-appropriate activities. Examples include: understanding and
6 learning terms, instructions, procedures; following one- or two-step
7 oral instructions to carry out a task; describing an activity to someone
8 else; asking and answering questions and providing explanations;
9 recognizing a mistake and correcting it; identifying and solving
10 problems; sequencing multi-step activities; and using reason and
11 judgment to make decisions. These examples illustrate the nature of
12 the area of mental functioning.

13 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 112.00E1. The ALJ noted evaluations
14 indicating normal thought process, coherent and concrete thought associations, and
15 good or intact recent and remote memory. Tr. 699 (citing Tr. 471, 1087). Thus,
16 the ALJ found a mild limitation in this functional area and provided an explanation
17 based on substantial evidence. The ALJ did not err in assessing a mild limitation
18 in this area.

19 Second, without referencing the record, Plaintiff argues the ALJ “failed to
20 address the evidence of self-mutilation, suicidal ideation, frequent absenteeism,
21 and failing grades.” ECF No. 14 at 18. However, the ALJ acknowledged that
Plaintiff alleged disability based in part on those issues and referenced the record
regarding such topics. Tr. 701, 704-05 (citing *e.g.*, Tr. 470, 568, 572). Thus, the
ALJ considered this evidence and Plaintiff’s argument is without merit.

1 Third, without referencing the record, Plaintiff asserts there is
2 “documentation of crisis response episodes and psychiatric hospitalization,” and
3 suggests this is relevant to the C criteria of the listings. ECF No. 10 at 12. As
4 noted *supra*, Listings 112.04 and 112.06 require findings meeting the criteria in
5 paragraphs A and B or A and C. The C criteria is used to evaluate mental
6 disorders that are “serious and persistent,” which means there is a “medically
7 documented history” of at least two years, with evidence showing ongoing medical
8 and mental treatment and evidence of “marginal adjustment. 20 C.F.R. Pt. 404,
9 Subpt. P, App. 1, § 112.00G. Marginal adjustment means, “your adaptation to the
10 requirements of daily life is fragile; that is, you have minimal capacity to adapt to
11 changes in your environment or to demands that are not already part of your daily
12 life.” *Id.* This is shown by evidence that changes or increased demands have led
13 to exacerbation of symptoms and deterioration in functioning. *Id.* Plaintiff has not
14 attempted to demonstrate that the C criteria is met or equaled. Even if a
15 psychiatric hospitalization is documented in the record (*see infra*), Plaintiff has not
16 shown that in itself would meet the requirements of the C criteria. Plaintiff’s
17 general C criteria argument has no merit.

18 Fourth, Plaintiff relies on Social Security Ruling (SSR) 17-2p to argue the
19 ALJ should have called a medical expert regarding equivalence. ECF No. 10 at 12.
20 The Ruling provides that if an ALJ believes that the evidence does not reasonably
21 support a finding that the individual’s impairment medically equals a listed

1 impairment, the ALJ is not required to obtain testimony from a medical expert to
2 regarding equivalence. SSR 17-2P, 2017 WL 3928306, at *4 (effective March 27,
3 2017). This is not authority requiring the ALJ to call an expert and there is no
4 error.

5 **C. Functionally Equals a Listing**

6 Plaintiff contends the ALJ erred by failing to find that Plaintiff's impairments
7 functionally equal Listing 112.04, 112.06, and 112.11. ECF No. 10 at 13. The
8 functional equivalence assessment requires evaluation of the child's functioning in
9 six domains. The domains are designed "to capture all of what a child can or cannot
10 do," including:

- 11 (1) Acquiring and using information;
- 12 (2) Attending and completing tasks;
- 13 (3) Interacting and relating with others;
- 14 (4) Moving about and manipulating objects;
- 15 (5) Caring for self; and
- 16 (6) Health and physical well-being.

17 20 C.F.R. § 416.926a(b)(1). An impairment will be deemed to functionally equal to
18 a listed impairment if the child's condition results in a "marked" limitations in two
19 domains, or an "extreme" limitation in one domain. 20 C.F.R. § 416.926a(a).

20 A "marked limitation" is a limitation that "interferes seriously with [a
21 person's] ability to independently initiate, sustain, or complete activities." 20 C.F.R.
§ 416.926a(e)(2)(i). An "extreme limitation" is defined as a limitation that
"interferes very seriously with [a person's] ability to independently initiate, sustain,
or complete activities." 20 C.F.R. § 416.926a(e)(3)(i).

1 The ALJ found that medical evidence does not support the conclusion that
2 Plaintiff's impairments functionally equaled the listings. Tr. 701. The ALJ
3 discussed the record in detail, including April 2018 exam notes from Grace Rueda,
4 M.D. (Tr. 433-35), a May 2018 teacher questionnaire from Corey Heitschmidt (Tr.
5 150-57), a July 2018 psychiatric evaluation by Benjamin Pe, M.D. (Tr. 469-72), an
6 Individualized Education Program (IEP) forms from November 2018 (Tr. 180-97)
7 and April 2020 (Tr. 666-688), a March 2019 teacher questionnaire from Lorena
8 Hernandez (Tr. 198-205), an April 2020 psychosocial evaluation (Tr. 921-22), and
9 various therapy and treatment notes (Tr. 459-465, 531-33, 563-66, 592, 1029, 1039,
10 1082, 1086-87, 1242-44). The ALJ discussed each these records and explained that
11 the findings do not support marked limitations in any of the functional domains. Tr.
12 701-06.

13 Without citing the record, Plaintiff argues the ALJ "skipped [discussing] all of
14 the appointments when he reported suicidal ideation and cutting behaviors, as well
15 as his inpatient hospitalization." ECF No. 13 at 23. First, as noted *supra*, the ALJ
16 did not omit discussion of records referencing suicidal ideation and cutting behavior.
17 Second, although Plaintiff does not cite the record for this argument, his statement of
18 facts references a psychiatric hospitalization "for multiple days due to suicidal
19 thoughts." ECF No. 10 at 3 (citing Tr. 397-98). However, the record cited is an
20 "Initial Support Plan" from Lutheran Community Services dated August 15, 2016,
21 which does not reference a hospitalization; in fact, it states there had been no

1 hospitalization in the past year. Tr. 397-98. A later record indicates that on August
2 15, 2016, Plaintiff was taken to a crisis response unit for suicidal thoughts,⁴ Tr. 408,
3 but there is no record indicating Plaintiff was hospitalized for mental health
4 concerns.⁵ The ALJ does not err by failing to discuss a hospitalization which is not
5 part of the record. Regardless, Plaintiff has not shown how such hospitalization,
6 even if it was documented in the record, would result in a marked limitation in any
7 domain, within the definition of the regulations.

8 Plaintiff asserts the questionnaires completed by his math teacher, Mr.
9 Heitschmidt, and his science teacher, Ms. Hernandez, in May 2018 and March 2019,
10 respectively, support his claim. ECF No. 10 at 13-14. The ALJ acknowledged that
11 Mr. Heitschmidt indicated that with regarding to the domain of attending and
12 completing tasks, Plaintiff had “no problem” to “a very serious problem” in the
13 various activities of the domain.⁶ Tr. 152, 702. However, Mr. Heitschmidt also

15 ⁴ Plaintiff’s mother testified at the first hearing that she called crisis response twice
16 in the previous couple of years. Tr. 38.

17 ⁵ It is unclear to the Court whether the hospitalization referenced was related to the
18 crisis response calls. Regardless, Plaintiff has not cited any records indicating any
19 mental health related hospitalization and the Court finds none in the record.

20 ⁶ Mr. Heitschmidt assessed no problem or a slight problem in 10 of the 13 activities
21 in the domain; he assessed a serious problem in the activities of completing

1 indicated that Plaintiff did not have any limitation in any of the other functional
2 domains. Tr. 152-55, 702. Plaintiff suggests the ALJ misstated Mr. Heitschmidt's
3 questionnaire, ECF No. 10 at 14, but the Court disagrees.

4 Similarly, the ALJ acknowledged that Ms. Hernandez indicated that Plaintiff
5 had unexcused absences and was chronically tardy. Tr. 198, 703. However, as to
6 limitations, Ms. Hernandez indicated "no limitation" to only a "slight problem" in
7 the activities of acquiring and using information and noted that "[m]ost
8 inappropriate behavior is very boy age behavior." Tr. 199, 703. In the activities of
9 attending and completing tasks, Ms. Hernandez assessed "no problem" to an
10 "obvious problem," but she opined that it was age appropriate since "[n]inth grade of
11 high school is a difficult adjustment." Tr. 200, 703. She also indicated that Plaintiff
12 had "no problem" or only "slight problem" in the activities of the other functional
13 domains. Tr. 201-03, 704. The ALJ reasonably concluded that Ms. Hernandez's
14 questionnaire does not support a marked limitation in any domain. Plaintiff points
15 out Ms. Hernandez mentioned Plaintiff's frequent absenteeism and academic deficits
16 and argues this corresponds to marked limitations in acquiring information and
17 attending and completing tasks. ECF No. 10 at 14. This argument is unsupported

18 _____
19 class/homework assignments and working at a reasonable pace/finishing on time,
20 and a very serious problem in the activity of organizing own things or school
21 materials. Tr. 152.

1 by Ms. Hernandez's evaluation and is without merit based on Ms. Hernandez's
2 overall assessment.

3 Plaintiff also argues that Ms. Hamel's opinion establishes marked limitations.
4 ECF No. 10 at 14. As discussed *supra*, the ALJ reasonably discounted Ms. Hamel's
5 opinion for legally sufficient reasons. Lastly, Plaintiff references 20 C.F.R.
6 416.926a(e)(2)(iv) and suggests he has a marked limitation in the domain of health
7 and physical well-being based on school absences. ECF No. 10 at 15. Plaintiff has
8 not demonstrated he meets the definition of a marked limitation in that domain by
9 frequency or overall effect. *See* 20 C.F.R.416.926a(e)(2)(iv). The ALJ's finding
10 that Plaintiff's impairments do not functionally equal a listing is supported by
11 substantial evidence and there is no error.

12 **D. Symptom Testimony**

13 An ALJ engages in a two-step analysis to determine whether to discount a
14 claimant's testimony regarding subjective symptoms. Social Security Ruling (SSR)
15 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must determine whether there is
16 objective medical evidence of an underlying impairment which could reasonably be
17 expected to produce the pain or other symptoms alleged." *Molina*, 674 F.3d at 1112
18 (quotation marks omitted). "The claimant is not required to show that [the
19 claimant's] impairment could reasonably be expected to cause the severity of the
20 symptom [the claimant] has alleged; [the claimant] need only show that it could
21

1 reasonably have caused some degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d
2 586, 591 (9th Cir. 2009).

3 Second, “[i]f the claimant meets the first test and there is no evidence of
4 malinger, the ALJ can only reject the claimant's testimony about the severity of
5 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
6 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
7 omitted). General findings are insufficient; rather, the ALJ must identify what
8 symptom claims are being discounted and what evidence undermines these claims.
9 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Thomas v. Barnhart*,
10 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently explain why it
11 discounted claimant's symptom claims)).

12 “The clear and convincing [evidence] standard is the most demanding
13 required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir.
14 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir.
15 2002)). Factors to be considered in evaluating the intensity, persistence, and
16 limiting effects of a claimant's symptoms include: 1) daily activities; 2) the location,
17 duration, frequency, and intensity of pain or other symptoms; 3) factors that
18 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and side
19 effects of any medication an individual takes or has taken to alleviate pain or other
20 symptoms; 5) treatment, other than medication, an individual receives or has
21 received for relief of pain or other symptoms; 6) any measures other than treatment

1 an individual uses or has used to relieve pain or other symptoms; and 7) any other
2 factors concerning an individual's functional limitations and restrictions due to pain
3 or other symptoms. 2017 WL 5180304, at *9 (effective October 25, 2017); 20
4 C.F.R. § 416.929(c).

5 The ALJ gave five reasons for finding Plaintiff's allegations inconsistent with
6 the record: (1) they are inconsistent with the objective evidence; (2) they are
7 inconsistent with Plaintiff's reports in the medical record; (3) they are inconsistent
8 with the teacher questionnaires; (4) they are inconsistent with records showing
9 medication and treatment were effective; and (5) they are inconsistent with Plaintiff's
10 abilities. Tr. 706. These are all valid reasons for discounting a claimant's symptom
11 statements. *See Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir.
12 2006) (indicating that conditions effectively controlled with medication are not
13 disabling for purposes of determining eligibility for benefits); *Burch*, 400 F.3d at 680
14 (9th Cir. 2005) (indicating minimal objective evidence is a factor which may be
15 relied upon in discounting symptom testimony, although it may not be the only
16 factor); *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir.1995) (indicating
17 contradiction with the medical record is a sufficient basis for rejecting the claimant's
18 subjective testimony); Social Security Ruling 16-3p, 2017 WL 5180304, at *5
19 (effective October 25, 2017) (indicating the ALJ evaluates a claimant's statements for
20 their consistency, both internally and with other information in the case record).

1 Plaintiff contends the ALJ “made little more than vague assertions,” failed to
2 consider the entire record, misrepresented the record, and failed to consider waxing
3 and waning of symptoms. ECF No. 10 at 17-18. Plaintiff essentially cites the same
4 evidence and makes the same arguments previously discussed, and for the same
5 reasons, the Court is not persuaded. To the extent that there is a conflict in the
6 evidence or it could be interpreted differently, the ALJ, not this court, is responsible
7 for reviewing the evidence and resolving conflicts or ambiguities. *Magallanes v.*
8 *Bowen*, 881 F.2d 747, 751 (9th Cir.1989); *see also Richardson v. Perales*, 402 U.S.
9 389, 400 (1971).

10 Plaintiff makes one specific argument, which is that the ALJ erroneously
11 relied on Plaintiff’s ability to graduate from high school, get a job, and work part-
12 time. ECF No. 10 at 18. Plaintiff observes that these events occurred after the
13 closed period and argues they were not properly considered. ECF No. 10 at 18. The
14 ALJ acknowledged that Plaintiff requested a closed period of disability ending
15 August 3, 2021, before Plaintiff attained age 18, and Plaintiff stipulated to medical
16 improvement as of that date. Tr. 692. The record and Plaintiff’s testimony suggests
17 that he graduated from high school in April 2022 and began working in May 2022,
18 which, as Plaintiff points out, is after the closed period. Thus, the ALJ should not
19 have considered Plaintiff’s ability to work and graduate from high school as
20 inconsistent with his abilities during the alleged period of disability. However, the
21 ALJ gave other clear and convincing reasons supported by substantial evidence for

1 discounting Plaintiff's symptom statements, so any error is harmless. *See Molina*,
2 674 F.3d at 1115; *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162-
3 63 (9th Cir. 2008); *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th
4 Cir. 2004).

5 **E. Lay Witness Statements**

6 Plaintiff contends the ALJ erred by improperly assessing the lay witness
7 statements. ECF No. 10 at 15-21. For claims filed on or after March 27, 2017, 20
8 C.F.R. § 416.9520c describes how an ALJ must evaluate evidence from medical
9 sources and clarifies how an ALJ should evaluate nonmedical lay testimony. *See* 20
10 C.F.R. § 416.920c(d). The regulations indicate ALJs should consider "all of the
11 available evidence" in evaluating the intensity and persistence of symptoms,
12 including evidence from "medical sources and nonmedical sources" about the effect
13 of a claimant's symptoms. 20 C.F.R. § 416.929(c)(1); *see also* SSR 16-3p (requiring
14 ALJs to consider other evidence such as other nonmedical sources to evaluate
15 symptoms). However, an ALJ is not required to articulate how evidence from
16 nonmedical sources was considered using the requirements applicable to evaluations
17 of medical opinions. *See* 20 C.F.R. § 416.920c(d). Rather, "[i]f the ALJ wishes to
18 discount the testimony of lay witnesses, he must give reasons that are germane to
19 each witness." *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).

20 *1. Krystal J.*

21

1 Plaintiff's mother, Krystal J. completed a statement in November 2022. Tr.
2 911. She stated that Plaintiff completed the last three years of high school online
3 from home because he struggled to leave the house and missed too many days of
4 school. Tr. 911. She noted he had stopped cutting himself around 2019 and had
5 used marijuana for a short time. Tr. 911. She stated that since the last hearing,
6 Plaintiff had been going to counseling, taking medication, and having less
7 depression. Tr. 911. She indicated he graduated from high school and took on a
8 part time job. Tr. 911. She stated that he still struggled with being disrespectful at
9 times, but it had improved. Tr. 911. He no longer needed reminders to shower or
10 perform hygiene, and she stated that he had improved and did not need disability.
11 Tr. 911.

12 The ALJ found Ms. J.'s statement to be partially persuasive. Tr. 709. The
13 ALJ found Ms. J.'s implication that Plaintiff was disabled before age 18 to be
14 inconsistent with mental status exams conducted before age 18, noting that he his
15 memory, concentration, and attention were routinely found to be intact and his
16 behavior was routinely noted to be cooperative. Tr. 709 (citing Tr. 433-56, 458,
17 518-71, 912-36, 1013-52, 1053-1118, 1125-1247). An ALJ may discount lay
18 testimony if it conflicts with medical evidence. *Lewis v. Apfel*, 236 F.3d 503, 511
19 (9th Cir. 2001) (citing *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984). The
20 ALJ found the portion of Ms. J.'s statement indicating Plaintiff was no longer
21 disabled to be consistent with Plaintiff's testimony that he had improved, graduated

1 from high school, and obtained a job. Tr. 709. Plaintiff does not specifically
2 address the ALJ's finding but makes the same general arguments regarding Ms. J.'s
3 statements as regarding Plaintiff's symptom testimony. ECF No. 15-18. The ALJ's
4 reasoning is specific, germane, and supported by substantial evidence.

5 *2. Ashley M.*

6 A May 2020 statement from a family friend, Ashley M., indicates that during
7 the three years that she had known Plaintiff, he had gone to crisis response twice for
8 depression, suicidal thoughts, and self-harm. Tr. 392. She stated that she could see
9 that he had "pretty severe anxiety" and "signs of severe depression." Tr. 392. She
10 noted he missed a lot of school because of the severity of his anxiety and depression.
11 Tr. 392. She stated that homeschooling had helped by reducing distraction, but that
12 isolation had been hard on him. Tr. 393. She explained that she had hired him to
13 walk her dogs two to three times a day and initially he did well, but then he did not
14 want to get up in the mornings to walk the dogs and complained about walking them
15 in the afternoon. Tr. 394. She stated that, "his disabilities [] prevented him from
16 having the desire to continue working." Tr. 393-94.

17 The ALJ found Ms. M.'s statement is not persuasive. Tr. 708. The ALJ
18 observed that Ms. M. does not have credentials or training to make an assessment
19 about Plaintiff's disabilities, and therefore found her statement that Plaintiff's
20 disability prevents him from having the desire to work is not persuasive. Tr. 708.
21 The ALJ found that Ms. M.'s observations made from first-hand knowledge are not

1 inconsistent with the ALJ's findings of less than marked limitations in all functional
2 domains. Tr. 708. Plaintiff argues generally that Ms. M.'s statement is consistent
3 with other records cited by Plaintiff, ECF NO. 10 at 19-20, which have already been
4 discussed throughout this decision. Plaintiff does not address the ALJ's reasoning,
5 which is specific, germane, and supported by substantial evidence.

6 *3. Charles and Kathleen W.*

7 An April 2020 statement submitted by Plaintiff's paternal grandparents,
8 Charles and Kathleen W., indicates that they had become concerned about Plaintiff's
9 physical and mental health in the preceding few years. Tr. 388. They noted that
10 Plaintiff had days when he was extremely sullen and preferred to sleep or just sit and
11 stare. Tr. 388. When he was upbeat, he would be helpful and engage in intelligent
12 conversations with excellent vocabulary. Tr. 388. When he was depressed, he
13 would look droopy and drag himself around and would stop and rest more often
14 while helping with tasks. Tr. 388. They found it obvious that Plaintiff suffered from
15 depression and were concerned that he might have chronic fatigue syndrome or
16 another condition, such as Epstein-Barr, due to his lack of energy and low spirits.
17 Tr. 388.

18 The ALJ found the statement of Mr. and Ms. W. is not persuasive. Tr. 708.
19 The ALJ determined that observations that Plaintiff appeared depressed and lacked
20 energy were not inconsistent with the finding that Plaintiff has less than marked
21 limitations. Tr. 708. The ALJ rejected Mr. and Ms. W.'s speculation about chronic

1 fatigue syndrome, Epstein-Barr, or another condition since they are not qualified to
2 make such diagnoses, and the medical evidence does not support those diagnoses.
3 Tr. 708. Plaintiff argues the ALJ improperly rejected the statement because Mr. and
4 Mrs. W. are not medical sources, ECF No. 10 at 21; however, Plaintiff
5 misunderstands the ALJ's finding. The ALJ appropriately rejected that portion of
6 the Mr. and Ms. W.'s statement suggesting another medical cause for Plaintiff's
7 behavior. The ALJ gave specific, germane reasons for the weight given to the
8 statement and substantial evidence supports the finding.

9 *4. Barbara J.*

10 In April 2020, Plaintiff's maternal grandmother, Barbara J., submitted a
11 statement indicating that Plaintiff participates in activities, but sometimes not whole-
12 heartedly. Tr. 389. He is talkative and has a good vocabulary, but sometimes he is
13 quiet, keeps to himself, and does not interact. Tr. 389. He was involved with a
14 youth choir but tried to get out of performances by saying his stomach hurt. Tr. 389.
15 She indicated that being in public is very stressful for him, including school. Tr.
16 389. She noted he struggled with grades and getting new concepts. Tr. 389. She
17 compared Plaintiff's behavior and feelings to those of her significant other, who
18 suffers from anxiety and depression. Tr. 389.

19 The ALJ found Ms. J.'s statement is not persuasive. Tr. 708. The ALJ found
20 that Ms. J.'s observations were not inconsistent with the conclusion that Plaintiff has
21 less than marked functional limitations. Tr. 708. The ALJ also noted that Ms. J.'s

1 statement that Plaintiff has depression and anxiety based on conversations with her
2 significant other is unpersuasive because there is no evidence that either of them is a
3 medical provider qualified to makes such diagnoses. Tr. 708. Plaintiff argues the
4 ALJ improperly rejected the statement because Ms. J. is not a medical source, ECF
5 No. 10 at 21; however, Plaintiff misunderstands the ALJ's finding. The ALJ
6 appropriately rejected that portion of the statement involving medical conclusions
7 Ms. J. and her partner appear unqualified to make. The ALJ gave specific, germane
8 reasons for the weight given to the statement and substantial evidence supports the
9 finding.

10 *5. Bethany J.*

11 In April 2020, Plaintiff's aunt, Bethany J., submitted a statement indicating
12 her observations related to his depression. Tr. 391. She stated that when she would
13 speak with him and ask how he was doing, he would usually say "good" or "okay,"
14 but would not openly express why he was just "okay." Tr. 391. She would typically
15 have to ask leading or suggestive questions about his life and feelings. Tr. 391. She
16 never knew whether he was expressing his honest feelings or if he was just being
17 agreeable. Tr. 391.

18 The ALJ found Ms. J.'s statement is unpersuasive. Tr. 708. The ALJ noted
19 that Ms. J.'s observations and anecdotes are not inconsistent with the finding that
20 Plaintiff has less than marked limitations in all functional domains. Tr. 708. The
21 ALJ also observed that the record does not reflect that Ms. J. has training or

1 credentials to make assessments regarding Plaintiff's mental health functioning, and
2 therefore any conclusions by her are not persuasive. Tr. 708. Plaintiff argues the
3 ALJ improperly rejected the statement because Ms. J. is not a medical source, ECF
4 No. 10 at 21; however, Plaintiff misunderstands the ALJ's finding. The ALJ largely
5 acknowledged the content of Ms. J.'s statement and only rejected it to the extent of
6 the assessment of mental health diagnosis or functioning, upon which Ms. J. does
7 not appear qualified to opine. Tr. 708. The ALJ gave specific, germane reasons for
8 the weight given to the statement and substantial evidence supports the finding.

9 CONCLUSION

10 Having reviewed the record and the ALJ's findings, this Court concludes the
11 ALJ's decision is supported by substantial evidence and free of harmful legal error.


12 Accordingly,

13 1. Plaintiff's Brief, **ECF No. 10**, is **DENIED**.

14 2. Defendant's Brief, **ECF No. 14**, is **GRANTED**.

15 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order
16 and provide copies to counsel. Judgment shall be entered for Defendant and the file
17 shall be **CLOSED**.

18 **DATED** September 30, 2024.

19
20 
21 LONNY R. SUKO
Senior United States District Judge